STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

June 26, 2003

Agenda ID 2440
Alternate Order to 2124
Ratesetting

TO: PARTIES OF RECORD IN RULEMAKING 02-01-011

Enclosed are the Alternate Draft Pages of Commissioner Loretta Lynch to the Alternate Proposed Draft Decision of Commissioner Geoffrey Brown previously mailed to you.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

As set forth in Rule 77.6(d), parties to the proceeding may file comments on the enclosed alternate pages by July 7, 2003. An original and four copies of the comments with a certificate of service shall be filed with the Commission's Docket Office and copies shall be served on all parties on the same day of filing. The Commissioners and ALJ shall be served separately by overnight service.

Angela Minkin
Chief, Administrative Law Judge

ANG:epg

/enclosure

Decision **PROPOSED ALTERNATE PAGES OF COMMISSIONER LYNCH**
**(Mailed 6/26/2003)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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| Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060. | Rulemaking 02-01-011 (Filed January 9, 2002) |

# ORDER ADOPTING COST RESPONSIBILITY SURCHARGE MECHANISMS FOR MUNICIPAL DEPARTING LOAD

At the same time, the record does not prove that DWR did not incur any costs for any new load that might conceivably end up with a publicly-owned utility. Scenarios can be considered whereby large amounts of new development or business parks locate in territory that is annexed or expanded into by publicly-owned utilities. Because the level of such activity is unknown, DWR purchases may well have assumed some of this load to be utility load, even if a certain level of new MDL was assumed due to historical trends. As pointed out by the utilities, there are a number of municipal utilities and irrigation districts that have formed since February 1, 2001 and / or are not currently providing electrical service to customers. There is the potential for considerable expansion of municipal departing load, including new MDL, above historical levels.

Therefore, it is reasonable to establish a CRS policy for new MDL which allows some new MDL to be exempt from CRS, but not all. A reasonable way to make a distinction is to assume that historical trends will continue with current publicly-owned utilities and to not impose a CRS on new MDL associated with existing publicly-owned utilities. In order to ensure that a loophole is not created that encourages new publicly-owned utilities to develop solely to take advantage of a disparity in rates associated with DWR and historical utility cost responsibility costs – to the detriment of remaining IOU ratepayers – it is reasonable to create a different policy for new publicly-owned utilities. Therefore, new MDL served by a new publicly-owned utility will be subject to cost responsibility surcharges. However, a municipality that provides electric service and annexes adjoining territory within the service territory of an electrical corporation, or any new customer of the municipality not previously served by the electrical corporation and located within the adjoining territory annexed by the municipality, is not subject to the cost responsibility surcharges identified in this order so long as the following conditions apply:

1. the municipality is operating its own local publicly owned utility.
2. the municipality was servicing all electric customers residing within its corporate boundaries before February 1, 2001.
3. the municipality, on or after February 1, 2001, annexed adjoining territory within the service territory of an IOU
4. the municipality provides all municipal services, including, but not limited to, electricity, to residents of the annexed area.

We note that it is unlikely but possible that existing publicly owned utilities will add large amounts of new MDL, beyond any reasonable forecasted levels. This could have

record being developed in that phase may have potential relevance in evaluating the nature and extent of any MDL cap that may be considered.

Capping of CRS obligations causes bundled customers to fund resulting CRS undercollections which must ultimately be reimbursed with interest. The need for and nature of any cap for MDL (as well as DA) customers must be weighed carefully in recognition of our obligation to achieve bundled customer indifference and to avoid cost shifting. Thus, we defer consideration of the imposition of any MDL caps pending our further developments regarding DA CRS caps and the quantification of the total MDL CRS obligation. We shall provide for appropriate opportunity to be heard on the issue of a MDL cap before finalizing the implementation of any CRS to be billed to MDL customers.

## I. Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-02 First Extraordinary Session). Therefore, Public Utilities Code Section 1731(c) (applications for rehearing are due within 10 days after the date issuance of the order or decision) and Public Utilities Code Section 1768 (procedures applicable to judicial review) are applicable.

## II. Comments on the Proposed Decision

The Proposed Decision of Administrative Law Judge Thomas R. Pulsifer and the Alternate Decision of Commissioner Brown were filed and served on parties on April 22, 2003. The Alternate Pages of Commissioner Lynch was filed and served on parties on June 26, 2003. Accordingly, the public comment provisions of § 311(g)(1) and Rule 77.7(b) of the Commission's Rules of Practice and Procedure apply. Comments on the Alternate Pages are due on July 7, 2003.

7. Section 369 states that the obligation to pay CTC is not avoided by the formation of a publicly owned electrical corporation after December 20, 1995, or by annexation of any portion of an electrical corporation's service area.

8. Consistent with the imposition of an HPC to bundled and DA customers in previous Commission orders, it is appropriate an HPC to MDL customers in order to avoid cost shifting.

9. New MDL does not result in cost-shifting to bundled customers if DWR did not include this load in its forecast of future utility load.

10. MDL for purposes of applying a CRS should not be defined to include new municipal customer load of existing publicly-owned utilities.

11. Existing publicly-owned utilities are those publicly-owned utilities formed and delivering electricity to all retail end-use customers residing within its corporate boundaries before February 1, 2001.

12. In accordance with Section 369, "new load" for purposes of CRS recovery excludes load being met through a direct transaction that does not otherwise require the use of transmission and distribution facilities owned by the IOU. Section 369, however, does not exempt new municipal load where the municipal agency is interconnected with and uses the IOU's transmission system.

13. The elements of cost responsibility as set forth in the order below should be applied to MDL customers in order to avoid cost shifting in accord with the Legislative's intent set forth in AB 117.

14. The issue of whether or to what extent to cap the MDL CRS should be deferred pending further developments with respect to the DA CRS cap and the quantification of the MDL CRS obligation.

15. This decision construes, applies, implements, and interprets the provisions of AB 1X (Chapter 4 of the Statutes of 2001-02 First Extraordinary Session). Therefore, Pub. Util. Code Section 1731(c) (applications for rehearing are due